

## **Remarks:**

### **I. Introduction**

In the Office Action mailed on February 6, 2009, the Examiner withdrew claims 18 to 24 from consideration and rejected claims 1 to 17. The present amendment cancels claims 5 and 18 to 24, amends claims 1, and adds no new claims. Accordingly, claims 1 to 4 and 6 to 17 are now pending in this application.

### **II. Restrictions**

The Examiner required election of a single invention between: Group I (claims 1 to 17); and Group II, claims 18 to 24).

Applicant confirms election of Group 1 (claims 1 to 17) without traverse. Claims 18 to 24 have been cancelled.

### **III. Claim Rejections based on § 102(b)**

The Examiner rejected claims 1 to 3, 5 to 12, and 15 to 17 pursuant to 35. U.S.C. § 102(b) as being anticipated by Kilcoyne et al. (US 6,264,700).

The Examiner states that Kilcoyne discloses retention means in the form of a flange (the anchor 18) and that the valve is to be positioned with “the retention member against the wall”. However, referring to Kilcoyne, and for example figure 2, it is apparent that the retention means (anchor 18) is in the form of a tubular member which, relative to the valve, extends axially, as opposed to being disposed “substantially circumferentially about the valve” as required by amended claim 1 of the present application. Thus amended claim 1 is not anticipated by Kilcoyne. Further, the retention means (anchor 18) of Kilcoyne is adapted to allow the valve to be secured to the wall of the oesophagus, as opposed to the stomach wall as also required by amended claim 1 of the present application. It is the circumferentially extending flange of claim 1 of the present application that enables the anti-reflux device to be secured to the stomach wall. Such an arrangement is neither disclosed or suggested in Kilcoyne. By fixing the device to the stomach wall as opposed to the wall of the oesophagus, it is possible to locate the entire device within the stomach, and thus avoid having any portion fixed in the oesophagus at the entrance to the stomach, as is the case with the device of Kilcoyne. The anchor 18 of the Kilcoyne device may result in ingested matter becoming lodged at the entrance to the stomach, as the anchor 18 does form a slight restriction in the oesophagus, and provides surfaces about which ingested

matter may become trapped. In addition, the presence of the anchor 18 of the Kilcoyne device is likely to impair healing of a defective lower oesophageal valve. This is not an issue with the anti-reflux device of amended claim 1 of the present application, which omits any such retention means within the oesophagus, as a result of the provision of the “substantially circumferentially” disposed flange, which can be secured to the stomach wall.

It is therefore respectfully submitted that amended claim 1 of the present application is both novel and nonobvious over the prior art relied upon by the Examiner.

Independent claim 1, and claims dependent therefrom, are allowable because they each include the limitations of “wherein the retention means comprises a flange disposed substantially circumferentially about the valve, which flange is adapted to enable the device to be secured to the stomach wall.” No prior art of record reasonably discloses or suggests the present invention as defined by claim 1. Reconsideration and withdrawal of the rejection is requested.

#### **IV. Claim Rejections based on § 103(a)**

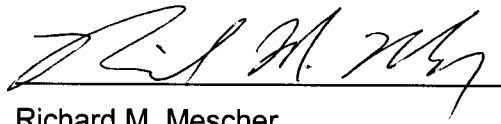
The Examiner rejected claims 4, 13, and 14 pursuant to 35. U.S.C. § 103(a) as unpatentable over Kilcoyne et al. (US 6,264,700).in view of Taylor (US 6,254,642).

Claims 4, 13 and 14 are allowable as depending from allowable claim 1 as discussed above and independently allowable for the novel an nonobvious matter contained therein. Reconsideration and withdrawal of the rejection is requested.

#### **V. Conclusion**

In light of the foregoing, it is respectfully submitted that the present application is in a condition for allowance and notice to that effect is hereby requested. If it is found that that the present response does not place the application in a condition for allowance, Applicant’s undersigned attorney requests that the Examiner initiate a telephone interview to expedite prosecution of the application. If there are any fees resulting from this communication, please charge same to our Deposit Account No. 50-3915.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. M. Mescher", written over a horizontal line.

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